

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN JOHNSON,

Petitioner,

v.

**Case No. 11-C-865
(USCA No. 12-3203)**

**JEFFREY PUGH,
Warden of Stanley Correctional Institution,**

Respondent.

DECISION AND ORDER

This Decision and Order addresses the motion and second motion of pro se Petitioner Steven Johnson (“Johnson”) to appeal *in forma pauperis*. This Court may allow a party to proceed *in forma pauperis* on appeal, only if the Court finds that he is indigent and that the party is taking his appeal in good faith. 28 U.S.C. § 1915(a)(3).

Johnson’s affidavits accompanying his motions for permission to appeal *in forma pauperis* establish that he is unable to pay the fees for filing the appeal. Thus, for purposes of prosecuting the appeal, Johnson is indigent.

To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. *Walker v. O’Brien*, 216 F.3d 626, 631-32 (7th Cir. 2000). On the other hand, an appeal taken in bad faith is one that is based on a

frivolous claim, that is, a claim that no reasonable person could suppose has any merit. *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000).

On August 27, 2012, the Court issued a Decision and Order granting Johnson's motions to amend/correct his petition, denying his motions for an evidentiary hearing and for summary judgment, and denying his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 27, 2012, the Clerk of Court also entered judgment as directed. On September 14, 2012, the Court issued a Decision and Order denying Johnson's Rule 59(e) motion and his motion to disqualify the Court from deciding the Rule 59(e) motion. Thereafter, Johnson filed a petition for a writ of mandamus with the Court of Appeals. By a September 27, 2012, Order, the Court of Appeals construed the petition for a writ of mandamus as a notice of appeal. (ECF No. 67).

Johnson's motions to appeal *in forma pauperis* suggest that he intends to appeal the August 27, 2012, Decision and Order, and Judgment, and the September 14, 2012, Decision and Order. Having considered those rulings, the appeal is legally frivolous and must be certified as not taken in good faith. If Johnson wants to appeal this decision, he must follow the procedure outlined in Federal Rule of Appellate Procedure 24(a)(5).

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Johnson's motion for leave to appeal *in forma pauperis* (ECF No. 75) and second motion to appeal *in forma pauperis* (ECF No. 76) are **DENIED** because this Court certifies that such appeal has been taken in **BAD FAITH**.

Dated at Milwaukee, Wisconsin this 15th day of October, 2012.

BY THE COURT



Hon. Rudolph T. Randa
U.S. District Judge